

Introduced by Senator Hancock

February 17, 2016

An act to amend Section 1170 of the Penal Code, relating to sentencing.

LEGISLATIVE COUNSEL'S DIGEST

SB 1084, as introduced, Hancock. Sentencing.

Existing law authorizes a prisoner who was under 18 years of age at the time of committing an offense for which the prisoner was sentenced to life without the possibility of parole to submit a petition for recall and resentencing after he or she has served at least 15 years of his or her sentence. Existing law prohibits a prisoner who tortured his or her victim or whose victim was a public safety official, as defined, from filing a petition for recall and resentencing. Existing law establishes certain criteria, at least one of which shall be asserted in the petition, to be considered when a court decides whether to conduct a hearing on the petition for recall and resentencing and additional criteria to be considered by the court when deciding whether to grant the petition. Existing law requires the court to hold a hearing if the court finds that the statements in the defendant's petition are true, as specified, and grants the court discretion to recall and resentence the defendant in the same manner as if he or she had not previously been sentenced, provided that the new sentence, if any, is not greater than the initial sentence.

This bill would instead authorize those prisoners to submit the petition for recall and resentencing after he or she has been committed to the custody of the Department of Corrections and Rehabilitation for 15 years. The bill would also require a court, if it finds by a preponderance of the evidence that one or more of the qualifying criteria is true, to

recall the sentence previously ordered and hold a hearing to resentence the defendant. The bill would make other conforming changes.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1170 of the Penal Code, as amended by
2 Section 1 of Chapter 378 of the Statutes of 2015, is amended to
3 read:

4 1170. (a) (1) The Legislature finds and declares that the
5 purpose of imprisonment for crime is punishment. This purpose
6 is best served by terms proportionate to the seriousness of the
7 offense with provision for uniformity in the sentences of offenders
8 committing the same offense under similar circumstances. The
9 Legislature further finds and declares that the elimination of
10 disparity and the provision of uniformity of sentences can best be
11 achieved by determinate sentences fixed by statute in proportion
12 to the seriousness of the offense as determined by the Legislature
13 to be imposed by the court with specified discretion.

14 (2) Notwithstanding paragraph (1), the Legislature further finds
15 and declares that programs should be available for inmates,
16 including, but not limited to, educational programs, that are
17 designed to prepare nonviolent felony offenders for successful
18 reentry into the community. The Legislature encourages the
19 development of policies and programs designed to educate and
20 rehabilitate nonviolent felony offenders. In implementing this
21 section, the Department of Corrections and Rehabilitation is
22 encouraged to give priority enrollment in programs to promote
23 successful return to the community to an inmate with a short
24 remaining term of commitment and a release date that would allow
25 him or her adequate time to complete the program.

26 (3) In any case in which the punishment prescribed by statute
27 for a person convicted of a public offense is a term of imprisonment
28 in the state prison or a term pursuant to subdivision (h) of any
29 specification of three time periods, the court shall sentence the
30 defendant to one of the terms of imprisonment specified unless
31 the convicted person is given any other disposition provided by
32 law, including a fine, jail, probation, or the suspension of
33 imposition or execution of sentence or is sentenced pursuant to

subdivision (b) of Section 1168 because he or she had committed his or her crime prior to July 1, 1977. In sentencing the convicted person, the court shall apply the sentencing rules of the Judicial Council. The court, unless it determines that there are circumstances in mitigation of the punishment prescribed, shall also impose any other term that it is required by law to impose as an additional term. Nothing in this article shall affect any provision of law that imposes the death penalty, that authorizes or restricts the granting of probation or suspending the execution or imposition of sentence, or expressly provides for imprisonment in the state prison for life, except as provided in paragraph (2) of subdivision (d). In any case in which the amount of preimprisonment credit under Section 2900.5 or any other law is equal to or exceeds any sentence imposed pursuant to this chapter, except for the remaining portion of mandatory supervision pursuant to subparagraph (B) of paragraph (5) of subdivision (h), the entire sentence shall be deemed to have been served, except for the remaining period of mandatory supervision, and the defendant shall not be actually delivered to the custody of the secretary or to the custody of the county correctional administrator. The court shall advise the defendant that he or she shall serve an applicable period of parole, postrelease community supervision, or mandatory supervision, and order the defendant to report to the parole or probation office closest to the defendant's last legal residence, unless the in-custody credits equal the total sentence, including both confinement time and the period of parole, postrelease community supervision, or mandatory supervision. The sentence shall be deemed a separate prior prison term or a sentence of imprisonment in a county jail under subdivision (h) for purposes of Section 667.5, and a copy of the judgment and other necessary documentation shall be forwarded to the secretary.

(b) When a judgment of imprisonment is to be imposed and the statute specifies three possible terms, the choice of the appropriate term shall rest within the sound discretion of the court. At least four days prior to the time set for imposition of judgment, either party or the victim, or the family of the victim if the victim is deceased, may submit a statement in aggravation or mitigation. In determining the appropriate term, the court may consider the record in the case, the probation officer's report, other reports, including reports received pursuant to Section 1203.03, and statements in

1 aggravation or mitigation submitted by the prosecution, the
2 defendant, or the victim, or the family of the victim if the victim
3 is deceased, and any further evidence introduced at the sentencing
4 hearing. The court shall select the term which, in the court's
5 discretion, best serves the interests of justice. The court shall set
6 forth on the record the reasons for imposing the term selected and
7 the court may not impose an upper term by using the fact of any
8 enhancement upon which sentence is imposed under any provision
9 of law. A term of imprisonment shall not be specified if imposition
10 of sentence is suspended.

11 (c) The court shall state the reasons for its sentence choice on
12 the record at the time of sentencing. The court shall also inform
13 the defendant that as part of the sentence after expiration of the
14 term he or she may be on parole for a period as provided in Section
15 3000 or 3000.08 or postrelease community supervision for a period
16 as provided in Section 3451.

17 (d) (1) When a defendant subject to this section or subdivision
18 (b) of Section 1168 has been sentenced to be imprisoned in the
19 state prison or county jail pursuant to subdivision (h) and has been
20 committed to the custody of the secretary or the county correctional
21 administrator, the court may, within 120 days of the date of
22 commitment on its own motion, or at any time upon the
23 recommendation of the secretary or the Board of Parole Hearings
24 in the case of state prison inmates, or the county correctional
25 administrator in the case of county jail inmates, recall the sentence
26 and commitment previously ordered and resentence the defendant
27 in the same manner as if he or she had not previously been
28 sentenced, provided the new sentence, if any, is no greater than
29 the initial sentence. The court resentencing under this subdivision
30 shall apply the sentencing rules of the Judicial Council so as to
31 eliminate disparity of sentences and to promote uniformity of
32 sentencing. Credit shall be given for time served.

33 (2) (A) (i) When a defendant who was under 18 years of age
34 at the time of the commission of the offense for which the
35 defendant was sentenced to imprisonment for life without the
36 possibility of parole ~~has served at least 15 years of that sentence,~~
37 *been committed to the custody of the department for at least 15*
38 *years,* the defendant may submit to the sentencing court a petition
39 for recall and resentencing.

(ii) Notwithstanding clause (i), this paragraph shall not apply to defendants sentenced to life without parole for an offense where *it was pled and proved that* the defendant tortured, as described in Section 206, his or her victim or the victim was a public safety official, including any law enforcement personnel mentioned in Chapter 4.5 (commencing with Section 830) of Title 3, or any firefighter as described in Section 245.1, as well as any other officer in any segment of law enforcement who is employed by the federal government, the state, or any of its political subdivisions.

(B) The defendant shall file the original petition with the sentencing court. A copy of the petition shall be served on the agency that prosecuted the case. The petition shall include the defendant's statement that he or she was under 18 years of age at the time of the crime and was sentenced to life in prison without the possibility of parole, the defendant's statement describing his or her remorse and work towards rehabilitation, and the defendant's statement that one of the following is true:

(i) The defendant was convicted pursuant to felony murder or aiding and abetting murder provisions of law.

(ii) The defendant does not have juvenile felony adjudications for assault or other felony crimes with a significant potential for personal harm to victims prior to the offense for which the sentence is being considered for recall.

(iii) The defendant committed the offense with at least one adult codefendant.

(iv) The defendant has performed acts that tend to indicate rehabilitation or the potential for rehabilitation, including, but not limited to, availing himself or herself of rehabilitative, educational, or vocational programs, if those programs have been available at his or her classification level and facility, using self-study for self-improvement, or showing evidence of remorse.

(C) If any of the information required in subparagraph (B) is missing from the petition, or if proof of service on the prosecuting agency is not provided, the court shall return the petition to the defendant and advise the defendant that the matter cannot be considered without the missing information.

(D) A reply to the petition, if any, shall be filed with the court within 60 days of the date on which the prosecuting agency was served with the petition, unless a continuance is granted for good cause.

1 (E) If the court finds by a preponderance of the evidence that
2 ~~the statements in the petition are true~~, *one or more of the statements*
3 *specified in clauses (i) to (iv), inclusive, of subparagraph (B) is*
4 *true*, the court shall ~~hold a hearing to consider whether to recall~~
5 the sentence and commitment previously ordered and *hold a*
6 *hearing* to resentence the defendant in the same manner as if the
7 defendant had not previously been sentenced, provided that the
8 new sentence, if any, is not greater than the initial sentence.
9 Victims, or victim family members if the victim is deceased, shall
10 retain the rights to participate in the hearing.

11 (F) The factors that the court may consider when determining
12 whether to ~~recall and~~ resentence *the defendant to a term of*
13 *imprisonment with the possibility of parole* include, but are not
14 limited to, the following:

15 (i) The defendant was convicted pursuant to felony murder or
16 aiding and abetting murder provisions of law.

17 (ii) The defendant does not have juvenile felony adjudications
18 for assault or other felony crimes with a significant potential for
19 personal harm to victims prior to the offense for which the sentence
20 is being considered for recall.

21 (iii) The defendant committed the offense with at least one adult
22 codefendant.

23 (iv) Prior to the offense for which the sentence is being
24 considered for recall, the defendant had insufficient adult support
25 or supervision and had suffered from psychological or physical
26 trauma, or significant stress.

27 (v) The defendant suffers from cognitive limitations due to
28 mental illness, developmental disabilities, or other factors that did
29 not constitute a defense, but influenced the defendant's
30 involvement in the offense.

31 (vi) The defendant has performed acts that tend to indicate
32 rehabilitation or the potential for rehabilitation, including, but not
33 limited to, availing himself or herself of rehabilitative, educational,
34 or vocational programs, if those programs have been available at
35 his or her classification level and facility, using self-study for
36 self-improvement, or showing evidence of remorse.

37 (vii) The defendant has maintained family ties or connections
38 with others through letter writing, calls, or visits, or has eliminated
39 contact with individuals outside of prison who are currently
40 involved with crime.

1 (viii) The defendant has had no disciplinary actions for violent
2 activities in the last five years in which the defendant was
3 determined to be the aggressor.

4 (G) The court shall have the discretion to ~~recall the sentence~~
5 ~~and commitment previously ordered~~ and to resentence the
6 defendant in the same manner as if the defendant had not
7 previously been sentenced, provided that the new sentence, if any,
8 is not greater than the initial sentence. The discretion of the court
9 shall be exercised in consideration of the criteria in subparagraph
10 ~~(B)~~. (F). Victims, or victim family members if the victim is
11 deceased, shall be notified of the resentencing hearing and shall
12 retain their rights to participate in the hearing.

13 (H) If the sentence is not ~~recalled~~, *recalled or the defendant is*
14 *resentenced to imprisonment for life without the possibility of*
15 *parole*, the defendant may submit another petition for recall and
16 resentencing to the sentencing court when the defendant has been
17 committed to the custody of the department for at least 20 years.
18 If recall and resentencing is not granted under that petition, the
19 defendant may file another petition after having ~~served been~~
20 *committed to the custody of the department for 24 years*. The final
21 petition may be submitted, and the response to that petition shall
22 be determined, during the 25th year of the defendant's ~~sentence~~.
23 *commitment to the department*.

24 (I) In addition to the criteria in subparagraph (F), the court may
25 consider any other criteria that the court deems relevant to its
26 decision, so long as the court identifies them on the record,
27 provides a statement of reasons for adopting them, and states why
28 the defendant does or does not satisfy the criteria.

29 (J) This subdivision shall have retroactive application.

30 (e) (1) Notwithstanding any other law and consistent with
31 paragraph (1) of subdivision (a), if the secretary or the Board of
32 Parole Hearings or both determine that a prisoner satisfies the
33 criteria set forth in paragraph (2), the secretary or the board may
34 recommend to the court that the prisoner's sentence be recalled.

35 (2) The court shall have the discretion to resentence or recall if
36 the court finds that the facts described in subparagraphs (A) and
37 (B) or subparagraphs (B) and (C) exist:

38 (A) The prisoner is terminally ill with an incurable condition
39 caused by an illness or disease that would produce death within

1 six months, as determined by a physician employed by the
2 department.

3 (B) The conditions under which the prisoner would be released
4 or receive treatment do not pose a threat to public safety.

5 (C) The prisoner is permanently medically incapacitated with
6 a medical condition that renders him or her permanently unable
7 to perform activities of basic daily living, and results in the prisoner
8 requiring 24-hour total care, including, but not limited to, coma,
9 persistent vegetative state, brain death, ventilator-dependency, loss
10 of control of muscular or neurological function, and that
11 incapacitation did not exist at the time of the original sentencing.

12 The Board of Parole Hearings shall make findings pursuant to
13 this subdivision before making a recommendation for resentencing
14 or recall to the court. This subdivision does not apply to a prisoner
15 sentenced to death or a term of life without the possibility of parole.

16 (3) Within 10 days of receipt of a positive recommendation by
17 the secretary or the board, the court shall hold a hearing to consider
18 whether the prisoner's sentence should be recalled.

19 (4) Any physician employed by the department who determines
20 that a prisoner has six months or less to live shall notify the chief
21 medical officer of the prognosis. If the chief medical officer
22 concurs with the prognosis, he or she shall notify the warden.
23 Within 48 hours of receiving notification, the warden or the
24 warden's representative shall notify the prisoner of the recall and
25 resentencing procedures, and shall arrange for the prisoner to
26 designate a family member or other outside agent to be notified
27 as to the prisoner's medical condition and prognosis, and as to the
28 recall and resentencing procedures. If the inmate is deemed
29 mentally unfit, the warden or the warden's representative shall
30 contact the inmate's emergency contact and provide the information
31 described in paragraph (2).

32 (5) The warden or the warden's representative shall provide the
33 prisoner and his or her family member, agent, or emergency
34 contact, as described in paragraph (4), updated information
35 throughout the recall and resentencing process with regard to the
36 prisoner's medical condition and the status of the prisoner's recall
37 and resentencing proceedings.

38 (6) Notwithstanding any other provisions of this section, the
39 prisoner or his or her family member or designee may
40 independently request consideration for recall and resentencing

1 by contacting the chief medical officer at the prison or the
2 secretary. Upon receipt of the request, the chief medical officer
3 and the warden or the warden's representative shall follow the
4 procedures described in paragraph (4). If the secretary determines
5 that the prisoner satisfies the criteria set forth in paragraph (2), the
6 secretary or board may recommend to the court that the prisoner's
7 sentence be recalled. The secretary shall submit a recommendation
8 for release within 30 days in the case of inmates sentenced to
9 determinate terms and, in the case of inmates sentenced to
10 indeterminate terms, the secretary shall make a recommendation
11 to the Board of Parole Hearings with respect to the inmates who
12 have applied under this section. The board shall consider this
13 information and make an independent judgment pursuant to
14 paragraph (2) and make findings related thereto before rejecting
15 the request or making a recommendation to the court. This action
16 shall be taken at the next lawfully noticed board meeting.

17 (7) Any recommendation for recall submitted to the court by
18 the secretary or the Board of Parole Hearings shall include one or
19 more medical evaluations, a postrelease plan, and findings pursuant
20 to paragraph (2).

21 (8) If possible, the matter shall be heard before the same judge
22 of the court who sentenced the prisoner.

23 (9) If the court grants the recall and resentencing application,
24 the prisoner shall be released by the department within 48 hours
25 of receipt of the court's order, unless a longer time period is agreed
26 to by the inmate. At the time of release, the warden or the warden's
27 representative shall ensure that the prisoner has each of the
28 following in his or her possession: a discharge medical summary,
29 full medical records, state identification, parole or postrelease
30 community supervision medications, and all property belonging
31 to the prisoner. After discharge, any additional records shall be
32 sent to the prisoner's forwarding address.

33 (10) The secretary shall issue a directive to medical and
34 correctional staff employed by the department that details the
35 guidelines and procedures for initiating a recall and resentencing
36 procedure. The directive shall clearly state that any prisoner who
37 is given a prognosis of six months or less to live is eligible for
38 recall and resentencing consideration, and that recall and
39 resentencing procedures shall be initiated upon that prognosis.

1 (11) The provisions of this subdivision shall be available to an
2 inmate who is sentenced to a county jail pursuant to subdivision
3 (h). For purposes of those inmates, “secretary” or “warden” shall
4 mean the county correctional administrator and “chief medical
5 officer” shall mean a physician designated by the county
6 correctional administrator for this purpose.

7 (f) Notwithstanding any other provision of this section, for
8 purposes of paragraph (3) of subdivision (h), any allegation that
9 a defendant is eligible for state prison due to a prior or current
10 conviction, sentence enhancement, or because he or she is required
11 to register as a sex offender shall not be subject to dismissal
12 pursuant to Section 1385.

13 (g) A sentence to state prison for a determinate term for which
14 only one term is specified, is a sentence to state prison under this
15 section.

16 (h) (1) Except as provided in paragraph (3), a felony punishable
17 pursuant to this subdivision where the term is not specified in the
18 underlying offense shall be punishable by a term of imprisonment
19 in a county jail for 16 months, or two or three years.

20 (2) Except as provided in paragraph (3), a felony punishable
21 pursuant to this subdivision shall be punishable by imprisonment
22 in a county jail for the term described in the underlying offense.

23 (3) Notwithstanding paragraphs (1) and (2), where the defendant
24 (A) has a prior or current felony conviction for a serious felony
25 described in subdivision (c) of Section 1192.7 or a prior or current
26 conviction for a violent felony described in subdivision (c) of
27 Section 667.5, (B) has a prior felony conviction in another
28 jurisdiction for an offense that has all the elements of a serious
29 felony described in subdivision (c) of Section 1192.7 or a violent
30 felony described in subdivision (c) of Section 667.5, (C) is required
31 to register as a sex offender pursuant to Chapter 5.5 (commencing
32 with Section 290) of Title 9 of Part 1, or (D) is convicted of a crime
33 and as part of the sentence an enhancement pursuant to Section
34 186.11 is imposed, an executed sentence for a felony punishable
35 pursuant to this subdivision shall be served in state prison.

36 (4) Nothing in this subdivision shall be construed to prevent
37 other dispositions authorized by law, including pretrial diversion,
38 deferred entry of judgment, or an order granting probation pursuant
39 to Section 1203.1.

1 (5) (A) Unless the court finds that, in the interests of justice, it
2 is not appropriate in a particular case, the court, when imposing a
3 sentence pursuant to paragraph (1) or (2), shall suspend execution
4 of a concluding portion of the term for a period selected at the
5 court's discretion.

6 (B) The portion of a defendant's sentenced term that is
7 suspended pursuant to this paragraph shall be known as mandatory
8 supervision, and, unless otherwise ordered by the court, shall
9 commence upon release from physical custody or an alternative
10 custody program, whichever is later. During the period of
11 mandatory supervision, the defendant shall be supervised by the
12 county probation officer in accordance with the terms, conditions,
13 and procedures generally applicable to persons placed on probation,
14 for the remaining unserved portion of the sentence imposed by the
15 court. The period of supervision shall be mandatory, and may not
16 be earlier terminated except by court order. Any proceeding to
17 revoke or modify mandatory supervision under this subparagraph
18 shall be conducted pursuant to either subdivisions (a) and (b) of
19 Section 1203.2 or Section 1203.3. During the period when the
20 defendant is under that supervision, unless in actual custody related
21 to the sentence imposed by the court, the defendant shall be entitled
22 to only actual time credit against the term of imprisonment imposed
23 by the court. Any time period which is suspended because a person
24 has absconded shall not be credited toward the period of
25 supervision.

26 (6) The sentencing changes made by the act that added this
27 subdivision shall be applied prospectively to any person sentenced
28 on or after October 1, 2011.

29 (7) The sentencing changes made to paragraph (5) by the act
30 that added this paragraph shall become effective and operative on
31 January 1, 2015, and shall be applied prospectively to any person
32 sentenced on or after January 1, 2015.

33 (i) This section shall remain in effect only until January 1, 2017,
34 and as of that date is repealed, unless a later enacted statute, that
35 is enacted before that date, deletes or extends that date.

36 SEC. 2. Section 1170 of the Penal Code, as amended by Section
37 2 of Chapter 378 of the Statutes of 2015, is amended to read:

38 1170. (a) (1) The Legislature finds and declares that the
39 purpose of imprisonment for crime is punishment. This purpose
40 is best served by terms proportionate to the seriousness of the

1 offense with provision for uniformity in the sentences of offenders
2 committing the same offense under similar circumstances. The
3 Legislature further finds and declares that the elimination of
4 disparity and the provision of uniformity of sentences can best be
5 achieved by determinate sentences fixed by statute in proportion
6 to the seriousness of the offense as determined by the Legislature
7 to be imposed by the court with specified discretion.

8 (2) Notwithstanding paragraph (1), the Legislature further finds
9 and declares that programs should be available for inmates,
10 including, but not limited to, educational programs, that are
11 designed to prepare nonviolent felony offenders for successful
12 reentry into the community. The Legislature encourages the
13 development of policies and programs designed to educate and
14 rehabilitate nonviolent felony offenders. In implementing this
15 section, the Department of Corrections and Rehabilitation is
16 encouraged to give priority enrollment in programs to promote
17 successful return to the community to an inmate with a short
18 remaining term of commitment and a release date that would allow
19 him or her adequate time to complete the program.

20 (3) In any case in which the punishment prescribed by statute
21 for a person convicted of a public offense is a term of imprisonment
22 in the state prison, or a term pursuant to subdivision (h), of any
23 specification of three time periods, the court shall sentence the
24 defendant to one of the terms of imprisonment specified unless
25 the convicted person is given any other disposition provided by
26 law, including a fine, jail, probation, or the suspension of
27 imposition or execution of sentence or is sentenced pursuant to
28 subdivision (b) of Section 1168 because he or she had committed
29 his or her crime prior to July 1, 1977. In sentencing the convicted
30 person, the court shall apply the sentencing rules of the Judicial
31 Council. The court, unless it determines that there are
32 circumstances in mitigation of the punishment prescribed, shall
33 also impose any other term that it is required by law to impose as
34 an additional term. Nothing in this article shall affect any provision
35 of law that imposes the death penalty, that authorizes or restricts
36 the granting of probation or suspending the execution or imposition
37 of sentence, or expressly provides for imprisonment in the state
38 prison for life, except as provided in paragraph (2) of subdivision
39 (d). In any case in which the amount of preimprisonment credit
40 under Section 2900.5 or any other provision of law is equal to or

1 exceeds any sentence imposed pursuant to this chapter, except for
2 a remaining portion of mandatory supervision imposed pursuant
3 to subparagraph (B) of paragraph (5) of subdivision (h), the entire
4 sentence shall be deemed to have been served, except for the
5 remaining period of mandatory supervision, and the defendant
6 shall not be actually delivered to the custody of the secretary or
7 the county correctional administrator. The court shall advise the
8 defendant that he or she shall serve an applicable period of parole,
9 postrelease community supervision, or mandatory supervision and
10 order the defendant to report to the parole or probation office
11 closest to the defendant's last legal residence, unless the in-custody
12 credits equal the total sentence, including both confinement time
13 and the period of parole, postrelease community supervision, or
14 mandatory supervision. The sentence shall be deemed a separate
15 prior prison term or a sentence of imprisonment in a county jail
16 under subdivision (h) for purposes of Section 667.5, and a copy
17 of the judgment and other necessary documentation shall be
18 forwarded to the secretary.

19 (b) When a judgment of imprisonment is to be imposed and the
20 statute specifies three possible terms, the court shall order
21 imposition of the middle term, unless there are circumstances in
22 aggravation or mitigation of the crime. At least four days prior to
23 the time set for imposition of judgment, either party or the victim,
24 or the family of the victim if the victim is deceased, may submit
25 a statement in aggravation or mitigation to dispute facts in the
26 record or the probation officer's report, or to present additional
27 facts. In determining whether there are circumstances that justify
28 imposition of the upper or lower term, the court may consider the
29 record in the case, the probation officer's report, other reports,
30 including reports received pursuant to Section 1203.03, and
31 statements in aggravation or mitigation submitted by the
32 prosecution, the defendant, or the victim, or the family of the victim
33 if the victim is deceased, and any further evidence introduced at
34 the sentencing hearing. The court shall set forth on the record the
35 facts and reasons for imposing the upper or lower term. The court
36 may not impose an upper term by using the fact of any
37 enhancement upon which sentence is imposed under any provision
38 of law. A term of imprisonment shall not be specified if imposition
39 of sentence is suspended.

(c) The court shall state the reasons for its sentence choice on the record at the time of sentencing. The court shall also inform the defendant that as part of the sentence after expiration of the term he or she may be on parole for a period as provided in Section 3000 or 3000.08 or postrelease community supervision for a period as provided in Section 3451.

(d) (1) When a defendant subject to this section or subdivision (b) of Section 1168 has been sentenced to be imprisoned in the state prison or county jail pursuant to subdivision (h) and has been committed to the custody of the secretary or the county correctional administrator, the court may, within 120 days of the date of commitment on its own motion, or at any time upon the recommendation of the secretary or the Board of Parole Hearings in the case of state prison inmates, or the county correctional administrator in the case of county jail inmates, recall the sentence and commitment previously ordered and resentence the defendant in the same manner as if he or she had not previously been sentenced, provided the new sentence, if any, is no greater than the initial sentence. The court resentencing under this subdivision shall apply the sentencing rules of the Judicial Council so as to eliminate disparity of sentences and to promote uniformity of sentencing. Credit shall be given for time served.

(2) (A) (i) When a defendant who was under 18 years of age at the time of the commission of the offense for which the defendant was sentenced to imprisonment for life without the possibility of parole has ~~served at least 15 years of that sentence;~~ *been committed to the custody of the department for at least 15 years*, the defendant may submit to the sentencing court a petition for recall and resentencing.

(ii) Notwithstanding clause (i), this paragraph shall not apply to defendants sentenced to life without parole for an offense where *it was pled and proved that* the defendant tortured, as described in Section 206, his or her victim or the victim was a public safety official, including any law enforcement personnel mentioned in Chapter 4.5 (commencing with Section 830) of Title 3, or any firefighter as described in Section 245.1, as well as any other officer in any segment of law enforcement who is employed by the federal government, the state, or any of its political subdivisions.

(B) The defendant shall file the original petition with the sentencing court. A copy of the petition shall be served on the

1 agency that prosecuted the case. The petition shall include the
2 defendant's statement that he or she was under 18 years of age at
3 the time of the crime and was sentenced to life in prison without
4 the possibility of parole, the defendant's statement describing his
5 or her remorse and work towards rehabilitation, and the defendant's
6 statement that one of the following is true:

7 (i) The defendant was convicted pursuant to felony murder or
8 aiding and abetting murder provisions of law.

9 (ii) The defendant does not have juvenile felony adjudications
10 for assault or other felony crimes with a significant potential for
11 personal harm to victims prior to the offense for which the sentence
12 is being considered for recall.

13 (iii) The defendant committed the offense with at least one adult
14 codefendant.

15 (iv) The defendant has performed acts that tend to indicate
16 rehabilitation or the potential for rehabilitation, including, but not
17 limited to, availing himself or herself of rehabilitative, educational,
18 or vocational programs, if those programs have been available at
19 his or her classification level and facility, using self-study for
20 self-improvement, or showing evidence of remorse.

21 (C) If any of the information required in subparagraph (B) is
22 missing from the petition, or if proof of service on the prosecuting
23 agency is not provided, the court shall return the petition to the
24 defendant and advise the defendant that the matter cannot be
25 considered without the missing information.

26 (D) A reply to the petition, if any, shall be filed with the court
27 within 60 days of the date on which the prosecuting agency was
28 served with the petition, unless a continuance is granted for good
29 cause.

30 (E) If the court finds by a preponderance of the evidence that
31 ~~the statements in the petition are true~~, *one or more of the statements*
32 *specified in clauses (i) to (iv), inclusive, of subparagraph (B) is*
33 *true*, the court shall ~~hold a hearing to consider whether to recall~~
34 *the sentence and commitment previously ordered and hold a*
35 *hearing* to resentence the defendant in the same manner as if the
36 defendant had not previously been sentenced, provided that the
37 new sentence, if any, is not greater than the initial sentence.
38 Victims, or victim family members if the victim is deceased, shall
39 retain the rights to participate in the hearing.

1 (F) The factors that the court may consider when determining
2 whether to ~~recall and~~ resentence *the defendant to a term of*
3 *imprisonment with the possibility of parole* include, but are not
4 limited to, the following:

5 (i) The defendant was convicted pursuant to felony murder or
6 aiding and abetting murder provisions of law.

7 (ii) The defendant does not have juvenile felony adjudications
8 for assault or other felony crimes with a significant potential for
9 personal harm to victims prior to the offense for which the sentence
10 is being considered for recall.

11 (iii) The defendant committed the offense with at least one adult
12 codefendant.

13 (iv) Prior to the offense for which the sentence is being
14 considered for recall, the defendant had insufficient adult support
15 or supervision and had suffered from psychological or physical
16 trauma, or significant stress.

17 (v) The defendant suffers from cognitive limitations due to
18 mental illness, developmental disabilities, or other factors that did
19 not constitute a defense, but influenced the defendant's
20 involvement in the offense.

21 (vi) The defendant has performed acts that tend to indicate
22 rehabilitation or the potential for rehabilitation, including, but not
23 limited to, availing himself or herself of rehabilitative, educational,
24 or vocational programs, if those programs have been available at
25 his or her classification level and facility, using self-study for
26 self-improvement, or showing evidence of remorse.

27 (vii) The defendant has maintained family ties or connections
28 with others through letter writing, calls, or visits, or has eliminated
29 contact with individuals outside of prison who are currently
30 involved with crime.

31 (viii) The defendant has had no disciplinary actions for violent
32 activities in the last five years in which the defendant was
33 determined to be the aggressor.

34 (G) The court shall have the discretion to ~~recall the sentence~~
35 ~~and commitment previously ordered and~~ to resentence the
36 defendant in the same manner as if the defendant had not
37 previously been sentenced, provided that the new sentence, if any,
38 is not greater than the initial sentence. The discretion of the court
39 shall be exercised in consideration of the criteria in subparagraph
40 (B). (F). Victims, or victim family members if the victim is

1 deceased, shall be notified of the resentencing hearing and shall
2 retain their rights to participate in the hearing.

3 (H) If the sentence is not ~~recalled~~, *recalled or the defendant is*
4 *resentenced to imprisonment for life without the possibility of*
5 *parole*, the defendant may submit another petition for recall and
6 resentencing to the sentencing court when the defendant has been
7 committed to the custody of the department for at least 20 years.
8 If recall and resentencing is not granted under that petition, the
9 defendant may file another petition after having ~~served been~~
10 *committed to the custody of the department for 24 years*. The final
11 petition may be submitted, and the response to that petition shall
12 be determined, during the 25th year of the defendant's ~~sentence~~.
13 *commitment to the department*.

14 (I) In addition to the criteria in subparagraph (F), the court may
15 consider any other criteria that the court deems relevant to its
16 decision, so long as the court identifies them on the record,
17 provides a statement of reasons for adopting them, and states why
18 the defendant does or does not satisfy the criteria.

19 (J) This subdivision shall have retroactive application.

20 (e) (1) Notwithstanding any other law and consistent with
21 paragraph (1) of subdivision (a), if the secretary or the Board of
22 Parole Hearings or both determine that a prisoner satisfies the
23 criteria set forth in paragraph (2), the secretary or the board may
24 recommend to the court that the prisoner's sentence be recalled.

25 (2) The court shall have the discretion to resentence or recall if
26 the court finds that the facts described in subparagraphs (A) and
27 (B) or subparagraphs (B) and (C) exist:

28 (A) The prisoner is terminally ill with an incurable condition
29 caused by an illness or disease that would produce death within
30 six months, as determined by a physician employed by the
31 department.

32 (B) The conditions under which the prisoner would be released
33 or receive treatment do not pose a threat to public safety.

34 (C) The prisoner is permanently medically incapacitated with
35 a medical condition that renders him or her permanently unable
36 to perform activities of basic daily living, and results in the prisoner
37 requiring 24-hour total care, including, but not limited to, coma,
38 persistent vegetative state, brain death, ventilator-dependency, loss
39 of control of muscular or neurological function, and that
40 incapacitation did not exist at the time of the original sentencing.

1 The Board of Parole Hearings shall make findings pursuant to
2 this subdivision before making a recommendation for resentence
3 or recall to the court. This subdivision does not apply to a prisoner
4 sentenced to death or a term of life without the possibility of parole.

5 (3) Within 10 days of receipt of a positive recommendation by
6 the secretary or the board, the court shall hold a hearing to consider
7 whether the prisoner's sentence should be recalled.

8 (4) Any physician employed by the department who determines
9 that a prisoner has six months or less to live shall notify the chief
10 medical officer of the prognosis. If the chief medical officer
11 concurs with the prognosis, he or she shall notify the warden.
12 Within 48 hours of receiving notification, the warden or the
13 warden's representative shall notify the prisoner of the recall and
14 resentencing procedures, and shall arrange for the prisoner to
15 designate a family member or other outside agent to be notified
16 as to the prisoner's medical condition and prognosis, and as to the
17 recall and resentencing procedures. If the inmate is deemed
18 mentally unfit, the warden or the warden's representative shall
19 contact the inmate's emergency contact and provide the information
20 described in paragraph (2).

21 (5) The warden or the warden's representative shall provide the
22 prisoner and his or her family member, agent, or emergency
23 contact, as described in paragraph (4), updated information
24 throughout the recall and resentencing process with regard to the
25 prisoner's medical condition and the status of the prisoner's recall
26 and resentencing proceedings.

27 (6) Notwithstanding any other provisions of this section, the
28 prisoner or his or her family member or designee may
29 independently request consideration for recall and resentencing
30 by contacting the chief medical officer at the prison or the
31 secretary. Upon receipt of the request, the chief medical officer
32 and the warden or the warden's representative shall follow the
33 procedures described in paragraph (4). If the secretary determines
34 that the prisoner satisfies the criteria set forth in paragraph (2), the
35 secretary or board may recommend to the court that the prisoner's
36 sentence be recalled. The secretary shall submit a recommendation
37 for release within 30 days in the case of inmates sentenced to
38 determinate terms and, in the case of inmates sentenced to
39 indeterminate terms, the secretary shall make a recommendation
40 to the Board of Parole Hearings with respect to the inmates who

1 have applied under this section. The board shall consider this
2 information and make an independent judgment pursuant to
3 paragraph (2) and make findings related thereto before rejecting
4 the request or making a recommendation to the court. This action
5 shall be taken at the next lawfully noticed board meeting.

6 (7) Any recommendation for recall submitted to the court by
7 the secretary or the Board of Parole Hearings shall include one or
8 more medical evaluations, a postrelease plan, and findings pursuant
9 to paragraph (2).

10 (8) If possible, the matter shall be heard before the same judge
11 of the court who sentenced the prisoner.

12 (9) If the court grants the recall and resentencing application,
13 the prisoner shall be released by the department within 48 hours
14 of receipt of the court's order, unless a longer time period is agreed
15 to by the inmate. At the time of release, the warden or the warden's
16 representative shall ensure that the prisoner has each of the
17 following in his or her possession: a discharge medical summary,
18 full medical records, state identification, parole or postrelease
19 community supervision medications, and all property belonging
20 to the prisoner. After discharge, any additional records shall be
21 sent to the prisoner's forwarding address.

22 (10) The secretary shall issue a directive to medical and
23 correctional staff employed by the department that details the
24 guidelines and procedures for initiating a recall and resentencing
25 procedure. The directive shall clearly state that any prisoner who
26 is given a prognosis of six months or less to live is eligible for
27 recall and resentencing consideration, and that recall and
28 resentencing procedures shall be initiated upon that prognosis.

29 (11) The provisions of this subdivision shall be available to an
30 inmate who is sentenced to a county jail pursuant to subdivision
31 (h). For purposes of those inmates, "secretary" or "warden" shall
32 mean the county correctional administrator and "chief medical
33 officer" shall mean a physician designated by the county
34 correctional administrator for this purpose.

35 (f) Notwithstanding any other provision of this section, for
36 purposes of paragraph (3) of subdivision (h), any allegation that
37 a defendant is eligible for state prison due to a prior or current
38 conviction, sentence enhancement, or because he or she is required
39 to register as a sex offender shall not be subject to dismissal
40 pursuant to Section 1385.

1 (g) A sentence to state prison for a determinate term for which
2 only one term is specified, is a sentence to state prison under this
3 section.

4 (h) (1) Except as provided in paragraph (3), a felony punishable
5 pursuant to this subdivision where the term is not specified in the
6 underlying offense shall be punishable by a term of imprisonment
7 in a county jail for 16 months, or two or three years.

8 (2) Except as provided in paragraph (3), a felony punishable
9 pursuant to this subdivision shall be punishable by imprisonment
10 in a county jail for the term described in the underlying offense.

11 (3) Notwithstanding paragraphs (1) and (2), where the defendant
12 (A) has a prior or current felony conviction for a serious felony
13 described in subdivision (c) of Section 1192.7 or a prior or current
14 conviction for a violent felony described in subdivision (c) of
15 Section 667.5, (B) has a prior felony conviction in another
16 jurisdiction for an offense that has all the elements of a serious
17 felony described in subdivision (c) of Section 1192.7 or a violent
18 felony described in subdivision (c) of Section 667.5, (C) is required
19 to register as a sex offender pursuant to Chapter 5.5 (commencing
20 with Section 290) of Title 9 of Part 1, or (D) is convicted of a crime
21 and as part of the sentence an enhancement pursuant to Section
22 186.11 is imposed, an executed sentence for a felony punishable
23 pursuant to this subdivision shall be served in state prison.

24 (4) Nothing in this subdivision shall be construed to prevent
25 other dispositions authorized by law, including pretrial diversion,
26 deferred entry of judgment, or an order granting probation pursuant
27 to Section 1203.1.

28 (5) (A) Unless the court finds, in the interest of justice, that it
29 is not appropriate in a particular case, the court, when imposing a
30 sentence pursuant to paragraph (1) or (2), shall suspend execution
31 of a concluding portion of the term for a period selected at the
32 court's discretion.

33 (B) The portion of a defendant's sentenced term that is
34 suspended pursuant to this paragraph shall be known as mandatory
35 supervision, and, unless otherwise ordered by the court, shall
36 commence upon release from physical custody or an alternative
37 custody program, whichever is later. During the period of
38 mandatory supervision, the defendant shall be supervised by the
39 county probation officer in accordance with the terms, conditions,
40 and procedures generally applicable to persons placed on probation,

1 for the remaining unserved portion of the sentence imposed by the
2 court. The period of supervision shall be mandatory, and may not
3 be earlier terminated except by court order. Any proceeding to
4 revoke or modify mandatory supervision under this subparagraph
5 shall be conducted pursuant to either subdivisions (a) and (b) of
6 Section 1203.2 or Section 1203.3. During the period when the
7 defendant is under that supervision, unless in actual custody related
8 to the sentence imposed by the court, the defendant shall be entitled
9 to only actual time credit against the term of imprisonment imposed
10 by the court. Any time period which is suspended because a person
11 has absconded shall not be credited toward the period of
12 supervision.

13 (6) The sentencing changes made by the act that added this
14 subdivision shall be applied prospectively to any person sentenced
15 on or after October 1, 2011.

16 (7) The sentencing changes made to paragraph (5) by the act
17 that added this paragraph shall become effective and operative on
18 January 1, 2015, and shall be applied prospectively to any person
19 sentenced on or after January 1, 2015.

20 (i) This section shall become operative on January 1, 2017.